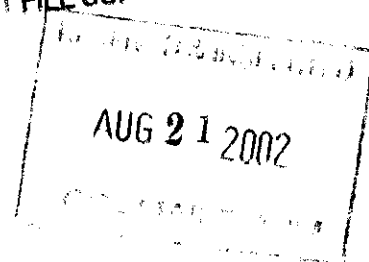


Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
Request for Review of a Decision of the)
Universal service Administrative Company)
By)
Houston Independent School District) File No. SLD-203737
Houston, Texas)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)
Changes to the Board of Directors of the) CC Docket No. 97-21 ✓
National Exchange Carriers Association, Inc.)

**ORDER****Adopted: August 5, 2002****Released: August 6, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Houston Independent School District (Houston), Houston, Texas, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Houston seeks review of a Funding Year 2000 funding commitment decision issued by SLD, relating to a request for support from Houston for internal connections.² For the reasons discussed below, we deny the Request for Review.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³

¹ *Request for Review of the Decision of the Universal Service Administrator by Houston Independent School District*, CC Docket Nos. 96-45 and 97-21, filed April 18, 2001 (Request for Review).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c). In prior years, this funding period was referred to as Funding Year 3. Funding periods are now described by the year in which the funding period starts. Thus, the funding period which began on July 1, 2000 and ended on June 30, 2001, previously known as Funding Year 3, is now called Funding Year 2000. The funding period which began on July 1, 2001 and ended on June 30, 2002 is now known as Funding Year 2001, and so on.

³ 47 C.F.R. §§ 54.502, 54.503.

The universal service support mechanism for schools and libraries has been administered to direct support toward the most economically disadvantaged schools and libraries. Under the program's discount matrix, the most economically disadvantaged schools are eligible for the greatest levels of discount.⁴

3. In the *Fifth Reconsideration Order*, the Commission established new rules to govern how discounts will be allocated when available funding is less than total demand and a filing window is in effect.⁵ These rules provide that requests for telecommunications and Internet access services for all discount categories shall receive first priority for available funds (Priority One Services), and requests for internal connections shall receive second priority (Priority Two Services).⁶ Thus, when total demand exceeds the total support available, SLD is directed to give first priority for available funding to telecommunications services or Internet access.⁷

4. Any funding remaining after allocation to Priority One Services is allocated to the requests for support for internal connections beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix.⁸ To determine their discount level, applicants calculate the percentage of their student body eligible for the National School Lunch Program and find the corresponding discount percentage in the discount matrix. Schools and libraries eligible for a 90 percent discount would receive first priority for the remaining funds, which would be applied to their requests for internal connections. To the extent funds remain, the Administrator would continue to allocate funds for discounts to applicants at each descending single discount percentage, e.g., 89 percent, 88 percent, and so on.⁹ During Funding Year 2000, SLD granted all approved requests for discounts for telecommunications services and Internet access and granted all approved requests for internal connections down to the 81 percent discount level.¹⁰

5. On January 19, 2000, Houston filed a FCC Form 471 application with SLD that

⁴ 47 C.F.R. § 54.505(c).

⁵ See *Federal-State Joint Board on Universal Service*, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, 13 FCC Rcd 14915, 14934, para. 31 (1998) (*Fifth Reconsideration Order*).

⁶ See 47 C.F.R. § 54.507(g)(1)(i).

⁷ The annual cap on federal universal service support for schools and libraries is \$2.25 billion per funding year. See 47 C.F.R. § 54.507(a).

⁸ *Fifth Reconsideration Order*, 13 FCC Rcd at 14938, para. 36. The schools and libraries discount matrix reflects both an applicant's urban or rural status and the percentage of its students eligible for the national school lunch program. 47 C.F.R. § 54.505.

⁹ 47 C.F.R. § 54.507(g)(1)(iii). In the *Eleventh Order on Reconsideration*, the Commission clarified that to the extent that there are single discount percentage levels associated with "shared services," the Administrator shall allocate funds for internal connections beginning at the ninety percent discount level, then for eighty-nine percent, eighty-eight percent and so on. *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, *Federal-State Joint Board on Universal Service*, Fifth Order on Reconsideration in CC Docket No. 97-21, Eleventh Order on Reconsideration in CC Docket No. 96-45, and Further Notice of Proposed Rulemaking, 14 FCC Rcd 6033, 6035, para. 6 (1999) (*Eleventh Order on Reconsideration*).

¹⁰ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rule Making and Order, 16 FCC Rcd 9880, 9882, n.13 (2001) (*Further Notice of Proposed Rulemaking*).

included two funding requests.¹¹ By letter dated June 16, 2000, SLD denied FRN 203737 and indicated that FRN 455725 was "as yet unfunded."¹² On December 22, 2000, SLD denied FRN 455725 and explained that because the funding request was only eligible for discounts at the 81 percent level, the request could not be granted.¹³ Houston filed the instant Request for Review on April 18, 2001, with respect to FRN 455725 only, asking that the Commission reconsider SLD's decision that funding was not available at the requested discount level.¹⁴ Houston argues that SLD has no authority to adopt a policy to reject all applications for internal connections below 82 percent in Funding Year 2000.¹⁵ As a result, it requests that the Commission direct SLD to approve FRN 455725, or alternatively hold it in abeyance, pending a determination by SLD regarding how much funding remains available to support its request.¹⁶

6. Under the Commission's rules of priority, SLD determines the appropriate level at which funding becomes unavailable for Internal connections as follows:

Once the application filing window closes, the SLD calculates the total demand for funding for that funding year. Then it determines the initial funding and denial thresholds for Internal Connections. The SLD determines the lowest discount level for Internal Connections for which funds will be sufficient through all the waves, and the highest discount level for Internal Connections for which funds are clearly insufficient. Approved Internal Connections requests at and above the funding threshold receive funding commitments as the applications are processed, and Internal Connections requests below the denial threshold receive a funding status of "Not Funded" without review. Early in the process of issuing waves of commitments, there is usually a substantial gap between funding and denial thresholds, and that gap narrows as the process goes forward.¹⁷

7. Administration of the schools and libraries support mechanism is the responsibility of SLD under the oversight of the Schools and Libraries Committee of USAC and, ultimately, Commission oversight.¹⁸ Under the rules adopted in the Commission's *Eighth Reconsideration Order*, the Schools and Libraries Committee's functions include "how USAC projects demand for the schools and libraries mechanism," "development of applications and

¹¹ FCC Form 471, Houston Independent School District, filed January 19, 2000 (Houston Form 471).

¹² Letter from Schools and Libraries Division, Universal Service Administrative Company to Daryl Ann Borel, Houston Independent School District, dated June 16, 2000 (June Funding Commitment Decision Letter).

¹³ Letter from Schools and Libraries Division, Universal Service Administrative Company to Daryl Ann Borel, Houston Independent School District, dated December 22, 2000 (December Funding Commitment Decision Letter).

¹⁴ Request for Review.

¹⁵ *Id.* at 10.

¹⁶ *Id.*

¹⁷ SLD Website, Service Categories: SLD Adjustment Process
<<http://www.sl.universalservice.org/reference/ServCategories.asp>>.

¹⁸ 47 C.F.R. § 54.705(a)(1) (setting forth the functions of the Schools and Libraries Committee) and 47 C.F.R. § 54.701(g)(i) (directing the Administrator to establish the Schools and Libraries Division, and setting forth its functions).

associated instructions,” “review of bills for services that are submitted by schools and libraries,” and “administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations.”¹⁹ Thus, under the *Eighth Reconsideration Order*, the Commission vested in the Schools and Libraries Committee and SLD the responsibility for projecting demand and administering applications for the universal service support mechanism for eligible schools and libraries. Designating the funding and denial thresholds for applications is integral to the proper projection of demand and implementation of administrative procedures that ensure compliance with Commission rules and regulations as granted in the *Eighth Reconsideration Order*. As such, setting the funding and demand thresholds are well within the authority of the Schools and Libraries Committee and SLD.

8. In Funding Year 2000, SLD estimated program demand to be over \$4.72 billion, well over the \$2.25 billion annual funding cap.²⁰ After estimating program demand, SLD determined that the highest discount level for Internal Connections for which funds were clearly insufficient was for requests below the 81% discount level. After making such a determination, pursuant to their administrative procedures, SLD informed Houston that their funding request at the 81% discount level was pending, and “as yet unfunded.”²¹ Subsequently, after processing additional applications, SLD determined that there was only enough funding available to process applications down to the 82% discount level.²²

9. After review of the record, we conclude that SLD correctly denied the FRN at issue in this Request for Review. In Funding Year 2000, there were insufficient funds to provide discounts for all eligible requests. Consequently, after funding all eligible Priority One Services, SLD distributed the remaining funds for Priority Two Services according to the discount matrix.²³ There were only sufficient funds for SLD to provide discounts for Priority Two Services (internal connections) that were eligible for an 82 percent discount.²⁴ As noted above, pursuant to the Petitioner’s own calculations, the funding request pending before the Commission was only eligible for discount at the 81 percent discount level.²⁵ Accordingly, we conclude that SLD properly denied funding for FRN 455725 under the Commission’s rules.

10. Furthermore, we deny Houston’s request to direct SLD to approve FRN 455725, or alternatively hold it in abeyance, pending a determination by SLD regarding how much funding remains available. Houston is correct that some funds from Funding Year 2000 have

¹⁹ 47 C.F.R. § 54.705(a)(1). See also *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal State Joint Board on Universal Service, Third Report and Order and Fourth Order on Reconsideration* in CC Docket No. 97-21 and *Eighth Order on Reconsideration* in CC Docket No. 96-45, 13 FCC Rcd 25058, 25075-76, paras. 30-31 and 34 (1998) (*Eighth Reconsideration Order*) (describing the functions of the Schools and Libraries Committee).

²⁰ SLD Website, What’s New Archive: February 2000
<<http://www.sl.universalservice.org/whatsnew/022000.asp#y3request>>.

²¹ June Funding Commitment Decision Letter.

²² See December Funding Commitment Decision Letter.

²³ *Fifth Reconsideration Order*, 13 FCC Rcd at 14938, para. 36.

²⁴ See *Further Notice of Proposed Rulemaking*.

²⁵ Houston Form 471.

gone unused by program participants.²⁶ Unused funds in a particular funding year result due to a variety of programmatic reasons, including some applicants' failure to claim committed funds.²⁷

11. The Commission recently revised its rules regarding the treatment of unused funds from the schools and libraries support mechanism.²⁸ The Commission determined that unused funds should be used to reduce the universal service contribution factor for no more than the next three quarters, beginning with the third quarter of 2002.²⁹ The Commission also determined that no later than the second quarter 2003, all unused funds will be carried forward into subsequent funding years of the schools and libraries program.³⁰ Accordingly, if there are unused Funding Year 2000 funds remaining after the second quarter 2003, such funds will be used in subsequent funding years, not Funding Year 2000. Thus, additional funds will not be made available to Funding Year 2000 applicants and we therefore deny Houston's Request for Review.

12. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Review filed by Houston Independent School District on April 18, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

²⁶ See *Request for Review of the Decision of the Universal Service Administrator by Houston Independent School District*, CC Docket Nos. 96-45 and 97-21, Supplemental Information to the Request for Review, filed May 17, 2002.

²⁷ In prior quarterly submissions, the Universal Service Administrative Company (USAC) estimated the portion of funds from the schools and libraries support mechanism that have gone unused in a given funding year. See, e.g., *Proposed First Quarter 2000 Universal Service Contribution Factors and Proposed Actions*, CC Docket No. 96-45, Public Notice, DA 99-2780 (rel. Dec. 10, 1999). According to USAC, this balance occurred because: 1) although USAC made funding commitments to certain schools and libraries, it received no indication that the services were or would be provided; 2) some schools and libraries used only a portion of the funds committed to them; and 3) a portion of the funds reserved for appeals would not be needed.

²⁸ See 47 U.S.C. § 54.507(a); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, First Report and Order, DA 02-175 (rel. June 13, 2002).

²⁹ *Id.*

³⁰ *Id.*